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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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FEB 12 2009



IN THE MATTER OF THE APPLICATION)
 OF ARIZONA PUBLIC SERVICE COMPANY,)
 IN CONFORMANCE WITH THE)
 REQUIREMENTS OF ARIZONA REVISED)
 STATUTES §§ 40-360, *et seq.*, FOR A)
 CERTIFICATE OF ENVIRONMENTAL)
 COMPATIBILITY AUTHORIZING THE TS-5)
 TO TS-9 500/230 kV TRANSMISSION LINE)
 PROJECT, WHICH ORIGINATES AT THE)
 FUTURE TS-5 SUBSTATION, LOCATED IN)
 THE WEST HALF OF SECTION 29,)
 TOWNSHIP 4 NORTH, RANGE 4 WEST AND)
 TERMINATES AT THE FUTURE TS-9)
 SUBSTATION, LOCATED IN SECTION 33,)
 TOWNSHIP 6 NORTH, RANGE 1 EAST, IN)
 MARICOPA COUNTY, ARIZONA)

DOCKET NO. L-00000D-08-0330-00138

Case No. 138

JOINT BRIEF OF INTERVENORS CITY
 OF PEORIA, DIAMOND VENTURES,
 INC., VISTANCIA, LLC, AND
 VISTANCIA COMMUNITY
 ASSOCIATIONS IN RESPONSE TO
 REQUEST FOR REVIEW

Pursuant to the Commission's January 22, 2009 Procedural Order in the above-captioned and above-docketed proceeding, the City of Peoria ("Peoria"), Diamond Ventures, Inc. ("Diamond Ventures"), Vistancia, LLC ("Vistancia") and Vistancia Community Associations ("Associations")¹ submit their Joint Brief in response to the January 13, 2009 Request For Review filed by Arizona Public Service Company ("APS") in response to the Certificate of Environmental Compatibility ("CEC") granted to APS by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") on December 29, 2008.

¹ In the interest of brevity, said Intervenor will refer to themselves collectively as the "Peoria Entities."

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I.

PERTINENT FACTUAL BACKGROUND

A. Impact of APS' Proposed Transmission Corridors on Peoria Entities

Approximately 11.6 miles or 31 percent of APS' TS-5 to TS-9 transmission project would pass through the northern area of Peoria, which area has been and is being planned for high-quality residential and commercial development in a manner consistent with Peoria's General Plan and related land use ordinances. Diamond Ventures has received Peoria Planned Community District ("PCD") approval for a 6,052-acre master-planned community to be known as Saddleback Heights. Saddleback Heights is bounded on the north by SR 74 in the area between the 123rd Avenue alignment and the 171st Avenue alignment; and, it is bounded on the south in that same vicinity by the Carefree Highway extension (which is not an existing roadway and is not planned to be a roadway). Vistancia has received PCD and final plat approval from Peoria for a 3,985- acre master-planned community to be known as Vistancia North. The aforesaid Carefree Highway extension borders Vistancia North on the north, and it serves as a common boundary between the Saddleback Heights and the Vistancia North master-planned communities. The Associations are comprised of current residents of Vistancia South, which is directly adjacent to and south of Vistancia North.²

In APS' July 2, 2008 Application for a CEC, Segment 5 of APS' Preferred Route contemplated a 4,000' wide transmission line corridor, which straddled the Carefree Highway extension, with 2,000' overlaying the southern portion of Saddleback Heights for a linear distance of approximately four (4) miles,³ and the second 2,000' feet overlaying the northern portion of Vistancia North for a linear distance of approximately five (5) miles. APS also proposed an alternative route in the same eastern portion of its TS-5 to TS-9 transmission project, which it named Alternative Route 3. That proposed corridor encompassed 3,500' which straddled SR 74, with 2,000' overlaying the acreage north of SR 74, and 1,500' overlaying the

² In that regard, residents of the Associations could be adversely affected by adverse impacts on Vistancia North resulting from Siting Case No. 138.

³ See Tr. 435, L. 15 – Tr. 436, L. 10.

1 acreage south of SR 74. In this instance, the southern 1,500' corridor overlay extended for a
2 linear distance of five (5) miles over the northern portion of Saddleback Heights.⁴ Attachment
3 "1" to this Joint Brief graphically depicts how Segment 5 of APS' Preferred Route and APS'
4 Alternative Route 3 would have substantially and adversely impacted Saddleback Heights and
5 Vistancia North, if either route had been approved.⁵

6 **B. The Peoria Entities' Proposed Alternative Route 3 North Corridor**

7 The Peoria Entities decided to collaborate in the presentation of an evidentiary case to
8 support an alternative route which would enable APS to achieve the electrical objectives of its
9 TS-5 to TS-9 transmission project in a manner that would be consistent with the decision-making
10 factors and requirements prescribed in A.R.S. § 40-360.06 and not adverse to the Peoria Entities.
11 The reasons for the Peoria Entities' collaboration are: 1) Segment 5 of APS' Preferred Route
12 would have substantially and adversely impacted both the Saddleback Heights and Vistancia
13 North master-planned communities as well as the existing residents of the Associations; 2) APS'
14 Alternative Route 3 corridor also would have substantially and adversely impacted Saddleback
15 Heights; and 3) those impacts thereby also substantially and adversely impacted the plans of
16 Peoria for the development of northern Peoria.

17 In furtherance of that objective, the Peoria Entities presented the testimony of eleven (11)
18 witnesses and forty-six (46) exhibits in support of what became known as Alternative Route 3
19 North during the hearings in Siting Case No. 138. In addition to testimony from one (1) or more
20 representatives from each entity, the Peoria Entities presented testimony from the following
21 expert witnesses on the following subjects. First, Gary Rich, an electrical engineer with more
22 than 40 years of experience in the electric utility industry, presented expert witness testimony on
23 the transmission design, construction and operating considerations underlying his
24 recommendation of the corridor for the Alternative Route 3 North proposal. In that regard, his

25 ⁴ See Tr. 436, L. 11-23.

⁵ See Exhibit P-12 (City of Peoria diagram showing the APS Corridors for Segments 4 & 5 and Alternative 3 through the northern Peoria land plans). Peoria's chief land planner also testified that Segment 5 would substantially and adversely impact the city's existing plans for Lake Pleasant Heights, a 3,268-acre planned development adjacent to Saddleback Heights and Vistancia. See Tr. 1925, L. 10-22 (Glen Van Nimwegen).

1 testimony demonstrated that use of the Alternative Route 3 North corridor would allow APS to
2 achieve the electrical objectives of its TS-5 to TS-9 transmission project with the same degree of
3 adequacy and reliability as use of either Segment 5 of APS' Preferred Route or APS' Alternative
4 Route 3,⁶ and without some of the potentially adverse construction and maintenance impacts
5 associated with use of either of the latter two (2) corridors. Second, Eleanor Gladding
6 (biological resources) and Suzanne Griset, Ph. D. (cultural and historical resources) of SWCA
7 Environmental Consultants presented expert witness testimony as to how any environmental
8 impacts associated with use of Alternative Route 3 North could either be avoided or satisfactorily
9 mitigated with recognized and accepted mitigation measures.⁷ Their testimony and exhibits also
10 addressed APS' environmental studies, and they concluded that the Alternative Route 3 North
11 corridor was equal, if not superior, to Segment 5 of APS' Preferred Route and APS' Alternative
12 Route 3 in terms of its potential impact on biological resources and cultural and historical
13 resources.⁸

14 Finally, Gordon L. Cheniae, a retired United States Bureau of Land Management
15 ("BLM") employee, with more than twenty-six (26) years of experience with BLM (including
16 several years as Manager of BLM's Phoenix District Office), testified as to the procedures that
17 BLM would use to process and act upon an application for that transmission line right-of-way
18 across BLM land included within the Alternative Route 3 North corridor proposal. In that
19 regard, Mr. Cheniae's testimony included a description of two (2) meetings he personally had
20 with the current Manager of BLM's Phoenix District Office in the summer and late fall of 2008,
21 during which they discussed the procedures BLM would use in processing a right-of-way

22 ⁶ APS witness Mike De Witt also acknowledged the suitability of the Alternative Route 3 North corridor in this
23 regard. See Tr. 3096, L. 19 – Tr. 3097, L. 23.

24 ⁷ See Tr. 2411, L. 3 – Tr. 2416, L. 12; and Tr. 2483, L. 4 – Tr. 2486, L. 23, respectively. See Exhibits DV-4 through
25 DV-8; and, Exhibits DV-9, Slides 9R, 12Ra and 8L, and Exhibit DV-11, page 25, respectively. Also, see cross-
examination of APS environmental witness Jennifer Frownfelter at Tr. 822, L. 7-15; Tr. 823, L. 13 – Tr. 824, L. 4-7;
and, Tr. 3097, L. 7-23.

⁸ See, for example, Tr. 2416, L. 13 – Tr. 2419, L. 12; and Exhibit DV-4, Slides 16R-17R (Gladding). Tr. 2479, L. 1
– Tr. 2482, L. 9, Tr. 2485, L. 14-20; and Exhibit DV-9, Slides 8L and 8La (Griset). In addition, Ms. Gladding
directly addressed concerns raised in a letter which had been written by the Arizona Game and Fish Department
("AGFD") in response to APS' CEC Application. Based upon her own direct contact with AGFD, and her analyses,
Ms. Gladding concluded that AGFD's concerns (i) were inapplicable to Alternative Route 3 North, (ii) of a nature
where any potential impact would be minimal and of short duration, or (iii) would apply to any electric transmission
line route in APS' study area. See Tr. 2419, L. 13 – Tr. 2426, L. 6; and Exhibit DV-4, Slide 18R.

1 application from APS for the Alternative Route 3 North corridor, and a reasonable timeline to
2 anticipate for those actions required of BLM.⁹

3 **C. Siting Committee Deliberations and Decision**

4 Following fifteen (15) days of evidentiary hearings and closing arguments by counsel for
5 each of the parties, the Siting Committee deliberated throughout the sixteenth (16th) hearing day.
6 It began its deliberations on a transmission line corridor in the eastern portion of the TS-5 to TS-
7 9 transmission project. This required that the Siting Committee consider Segments 4 and 5 of
8 APS' Preferred Route, APS' Alternative Route 3 and the Alternative Route 3 North corridor
9 proposed by the Peoria Entities.

10 Because of various problems associated with Segments 4 and 5 of APS' Preferred Route,
11 which had been identified and discussed by the Peoria Entities' witnesses, that particular corridor
12 was effectively eliminated from consideration early in the deliberation process. In that regard,
13 APS is in error when it suggests in its Request For Review that the Siting Committee did not
14 consider Segments 4 and 5.¹⁰ To the contrary, they were considered and rightfully determined to
15 be problematic. Similarly, the Siting Committee considered and quickly rejected APS'
16 Alternative Route 3 for many of the same reasons.

17 The Siting Committee instead selected Alternative Route 3 North as the "starting point"
18 for its deliberations. After extended discussion, the members of the Siting Committee decided
19 by a 7-2 vote to adopt the Alternative Route 3 North corridor which had been proposed by the
20 Peoria Entities, with two (2) modifications.¹¹ The first modification entailed a widening of the
21 Alternative Route 3 North corridor by an additional 500' on the south side of SR 74 for a
22 distance of less than two (2) miles, in order to mitigate the visual impact of the transmission line
23 upon the DLGC II, LLC and Lake Pleasant Group, LLP (collectively "DLGC") acreage north of
24 SR 74. The second modification entailed a realignment towards the western end of the
25 Alternative Route 3 North corridor, in order to address a visual impact concern raised by the

⁹ Tr. 2518, L. 19 – Tr. 2530, L. 24; Tr. 2531, L. 1 – Tr. 2533, L. 8; Tr. 2535, L. 2 – Tr. 2537, L. 22.

¹⁰ See APS Request For Review at page 4, lines 8-11.

¹¹ See Tr. 3484, L. 22 – Tr. 3485, L. 16.

1 Quintero Community Association and Quintero Golf & Country Club (collectively “Quintero”)
2 with regard to their development north of SR 74. In all other respects, the Alternative Route 3
3 North corridor adopted by the Siting Committee was the same corridor as that proposed by the
4 Peoria Entities and supported by a comprehensive evidentiary presentation. As discussed in
5 detail in Section II below, the Siting Committee’s adoption of the Alternative Route 3 North
6 corridor, as modified in the aforesaid manner, represents an appropriate application of the
7 decision-making factors prescribed in A.R.S. § 40-360.06 to the evidentiary record in this
8 proceeding; and, the Siting Committee’s adoption of the Alternative Route 3 North corridor, as
9 modified, should be affirmed by the Commission.

10 II.

11 THE SITING COMMITTEE’S ADOPTION OF THE ALTERNATIVE 12 ROUTE 3 NORTH CORRIDOR, AS MODIFIED BY THE SITING 13 COMMITTEE, REPRESENTS AN APPROPRIATE APPLICATION OF 14 THE DECISION-MAKING FACTORS PRESCRIBED IN A.R.S. § 40-360.06 15 TO THE EVIDENTIARY RECORD IN THIS PROCEEDING, AND SHOULD BE 16 AFFIRMED BY THE COMMISSION

17 A. The Significant Role of A.R.S. § 40-360.06 (A)(1) in the Circumstances of This 18 Proceeding

19 A.R.S. § 40-360.06 governs the decision-making role of the Siting Committee in relation
20 to an application for a CEC, and provides in pertinent part as follows:¹²

21 “A. The committee may approve or deny an application and may
22 impose reasonable conditions upon the issuance of a certificate of
23 environmental compatibility and in so doing shall consider the
24 following factors as a basis for its action with respect to the
25 suitability of either plant or transmission line siting plans:

1. Existing plans of the state, local government and private
2. entities for other developments at or in the vicinity of the proposed
3. site.

2. Fish, wildlife and plant life and associated forms of life upon
which they are dependent.

3. Noise emission levels and interference with communication
signals.

¹² Subsections (C) and (D) of A.R.S. § 40-360.06 are not implicated by the issues raised by APS’ Request For Review and thus are not discussed in this Joint Brief.

1 4. The proposed availability of the site to the public for
2 recreational purposes, consistent with safety considerations and
3 regulations.

4 5. Existing scenic areas, historic sites and structures or
5 archaeological sites at or in the vicinity of the proposed site.

6 6. The total environment of the area.

7 7. The technical practicability of achieving a proposed
8 objective and the previous experience with equipment and methods
9 available for achieving a proposed objective.

10 8. The estimated cost of the facilities and site as proposed by
11 the applicant and the estimated cost of the facilities and site as
12 recommended by the committee, recognizing that any significant
13 increase in costs represents a potential increase in the cost of
14 electric energy to the customers or the applicant.

15 9. Any additional factors which require consideration under
16 applicable federal and state laws pertaining to any such site.

17 B. The committee shall give special consideration to the protection
18 of areas unique because of biological wealth or because they are
19 habitats for rare and endangered species.” [emphasis added]

20 In the circumstances of the instant proceeding, and the evidentiary record developed
21 during the hearings on APS’ CEC Application, the decision-making factor prescribed at A.R.S. §
22 40-360.06(A)(1) regarding “existing plans” became particularly significant in connection with
23 the Siting Committee’s deliberations and its selection of the Alternative Route 3 North corridor,
24 as modified by the Siting Committee, for the eastern portion of APS’ TS-5 to TS-9 transmission
25 project.¹³ That is because, generally speaking, the Alternative Route 3 North corridor (as
modified) is either superior to or comparable with both Segment 5 of APS’ Preferred Route and
APS’ Alternative Route 3 in terms of “suitability,” when evaluated within the context of the
decision-making factors prescribed at A.R.S. § 40-360.06(A)(2)-(9) and (B). However, when the
Alternative Route 3 North corridor (as modified) and the aforesaid APS proposed corridors are
evaluated within the context of the decision-making factor prescribed at A.R.S. § 40-
360.06(A)(1) regarding “existing plans,” it becomes clear that the Alternative Route 3 North
corridor (as modified) is superior and substantially more suitable than the APS proposed

¹³ See, for example, Tr. 3418, L. 22 – Tr. 3419, L. 21; Tr. 3422, L. 24 – Tr. 3423, L. 1; Tr. 3430, L. 21-25; Tr. 3452, L. 17-20; Tr. 3479, L. 9 – Tr. 3480, L. 22; and Tr. 3480, L. 25 – Tr. 3482, L. 12. It should also be noted that the statutory criteria for existing land plans also guided the Committee’s deliberations and selection for the remainder of the power line route through Segments 1-3 in the Town of Buckeye and City of Surprise.

1 corridors. As discussed below, this difference assumed a significant role in the deliberations of
2 the Siting Committee and its selection of the Alternative Route 3 North corridor (as modified)
3 for the eastern portion of APS' TS-5 to TS-9 transmission project.

4 **B. Saddleback Heights and Vistancia North Are "Existing Plans of Local Government**
5 **and Private Entities" Within the Meaning of A.R.S. § 40-360.06(A)(1)**

6 Peoria presented evidence regarding (i) the City of Peoria's General Plan, which governs
7 land use and development throughout Peoria, (ii) Peoria's specific land use and planning goals
8 for development in north Peoria, (iii) Peoria's formal approval of the PCDs for Saddleback
9 Heights and Vistancia North as critical components in the contemplated development of north
10 Peoria, (iv) Peoria's opposition to both Segment 5 of APS' Preferred Route and APS'
11 Alternative Route 3 as being in conflict with Peoria's General Plan and land use planning goals,
12 and (v) Peoria's support for the Alternative Route 3 North corridor and its sensitivity to and
13 consistency with Peoria's General Plan and the Saddleback Heights' and Vistancia North's
14 PCDs.^{14 15 and 16}

15 Against this background, the Siting Committee properly concluded that the PCDs for
16 Saddleback Heights and Vistancia North were "existing plans of local government and private
17 entities" within the meaning of A.R.S. § 40-360.06(A)(1).¹⁷ The question then became whether
18 either Segment 5 of APS' Preferred Route or APS' Alternative Route 3 was suitable in relation
19 to the "existing plans" of Peoria, Saddleback Heights and Vistancia North. The CEC granted by
20 the Siting Committee on December 29, 2009 reflects the conclusion of the Siting Committee that
21 neither corridor proposed by APS was suitable.

22 ¹⁴ See Exhibits P-1 and P-12 through P-19; Tr. 1908, L. 15 – Tr. 1931, L. 24 (Glen Van Nimwegen).

23 ¹⁵ In that regard, the evidentiary record indicates that the preparation and receipt of official approval of a PCD
24 represents approximately 80% to 85% of the planning process for master-planned communities such as Saddleback
25 Heights and Vistancia North. See Tr. 2631, L. 14 – Tr. 2633, L. 11 (Ken Abrahams) and Tr. 2176, L. 22-23 (Mark
Hammons). Also, see Tr. 3419, L. 4-21 (Committee Member Noland).

¹⁶ Vistancia North also has received master final plat approval from Peoria for 3 of the 4 "villages" in Vistancia
North. See Tr. 2186-2187, L. 22-23 (Mark Hammons).

¹⁷ See, for example, Tr. 3418, L. 22 - Tr. 3419, L. 21. In that regard, it also become apparent during the course of the
Siting Committee's deliberations that the planned development for the DLGC acreage and the planned (and existing)
development for Quintero were "existing plans" as well within the meaning of A.R.S. § 40-360.06(A)(1).

1 **C. Either Saddleback Heights and/or Vistancia North Would be Substantially and**
2 **Adversely Impacted By Adoption of Either Segment 5 of APS' Preferred Route or**
3 **APS' Alternative Route 3, and Thus Neither of APS' Proposed Corridors is Suitable**

4 In addition to the testimony and exhibits of Peoria's witnesses concluding that both
5 Segment 5 of APS' Preferred Route and APS' Alternative Route 3 would conflict with "existing
6 plans" of Peoria, Saddleback Heights and Vistancia North presented testimony and exhibits
7 demonstrating the extent to which APS' aforementioned proposed corridors would physically
8 encroach upon and directly impact their respective master-planned communities. As noted in
9 Section I(A) above, adoption of Segment 5 of APS' Preferred Route and APS' Alternative Route
10 3 would impose a 2,000' wide transmission line corridor overlay on both the southern portion of
11 Saddleback Heights and the northern portion of Vistancia North for a linear distance of
12 approximately 4 miles and 5 miles, respectively. Alternatively, adoption of APS' Alternative
13 Route 3 would impose a 1,500' transmission corridor overlay on the northern portion of
14 Saddleback Heights for a linear distance of 4 miles. In that regard, the adverse impacts which
15 result when a CEC transmission line corridor is imposed upon private land was a subject of
16 extended discussion and consideration throughout the evidentiary hearings in Siting Case No.
17 138; and it clearly was taken into account by members of the Siting Committee throughout their
18 deliberations as to the overall transmission line corridor to be approved, and not just the
19 Alternative Route 3 North portion.¹⁸

20 More specifically, and with reference to Saddleback Heights and Vistancia North, Ken
21 Abrahams (Diamond Ventures) and Mark Hammons (Vistancia) presented testimony and
22 exhibits demonstrating how adoption of Segment 5 of APS' Preferred Route and APS'
23 Alternative Route 3 would directly impact their respective master-planned communities. With
24 reference to Segment 5 of APS' Preferred Route, Mr. Abrahams testified as to the regulatory and
25 physical constraints which would prohibit major adjustments to the PCD for Saddleback Heights,
in connection with any attempt to accommodate the overlay of that proposed transmission line
corridor on the southern portion of Saddleback Heights; and he discussed how Peoria's slope and
open space ordinances would limit the use which could be made of acreage encompassed within

¹⁸ See, for example, Tr. 3481, L. 3 – Tr. 3482, L. 12.

1 that portion of Segment 5 of APS' Preferred Route that would overlay Saddleback Heights.¹⁹ In
2 addition, Mr. Abrahams testified as to the risk and cost associated with any attempt to alter
3 existing land use entitlements, which would be necessitated by adoption of Segment 5.²⁰ He also
4 presented similar testimony and exhibits demonstrating the nature and extent of adverse impacts
5 upon the northern portion of Saddleback Heights, in the event of adoption of APS' proposed
6 Alternative Route 3 corridor.²¹ As Mr. Abrahams noted, the direct land use impacts on
7 Saddleback Heights would be substantial, with (i) three hundred forty-nine (349) acres of
8 dedicated passive open space and five hundred forty-seven (547) acres of residential site acreage
9 being directly included within the Segment 5 corridor; and, (ii) three hundred thirty-eight (338)
10 acres of dedicated passive open space, four hundred five (405) acres residential site acreage,
11 ninety-nine (99) acres of commercial acreage, and a two (2) acre school site being included
12 within APS' Alternative Route 3 corridor.

13 With reference to Vistancia North, Mr. Hammons testified that:

- 14 1. Vistancia has already incurred costs of more than \$350 million on engineering and land
15 development costs for infrastructure that will serve the entire Vistancia community,
16 including Vistancia North, which does not include \$115 million for land acquisition and
17 carrying costs;²²
- 18 2. While more than 50% of costs have been incurred "up front," less than 23% of project
19 revenues have been generated;²³
- 20 3. Development in areas adjacent to transmission lines typically involves commercial, high-
21 density multi-family and small lot residential which is consistent with how Vistancia
22 developed areas adjacent to the existing Westwing high-voltage transmission line
23 corridor which borders Vistancia to the southeast;²⁴

24 ¹⁹ See, for example, Tr. 2660, L. 23 – Tr. 2667, L. 16. Also, see Exhibit DV-13, Slides 17R-21R and 27L-37L.

25 ²⁰ See Tr. 2667, L. 20 – Tr. 2670, L. 25; and Tr. 2685, L. 18 – Tr. 2687, L. 24.

²¹ See, for example, Tr. 2665, L. 5, Tr. 2667, L. 13; Tr. 2671, L. 1 – Tr. 2673, L. 14; and Tr. 2688, L. 2 – Tr. 2689, L. 17. Also, see Exhibit DV-13, Slides 22R-23R and 38L-44L.

²² See Tr. 2191, L. 18-19 and Tr. 2194, L. 7.

²³ See Tr. 2189, L. 17 - Tr. 2190, L. 21.

²⁴ See Tr. 2213, L. 8 - Tr. 2216, L. 23.

- 1 4. Commercial, high-density multi-family, and small lot residential is not feasible in the
2 area within the Segment 5 corridor because of the extreme rugged terrain and density
3 restrictions imposed by the City of Peoria General Plan. The planned development for
4 those areas which is consistent with terrain and density limitations is large lot residential
5 which is not economically feasible in areas adjacent to or within several hundred feet of a
6 transmission line;²⁵
- 7 5. The direct land use impacts to Vistancia North will be substantial. Three hundred eighty-
8 five (385) acres or 33% of dedicated passive open space and 1,189 acres representing 575
9 housing units will be lost. The financial impact to Vistancia would be approximately
10 \$190 million which represents approximately 35% of Vistancia North's projected
11 revenue north of the Central Arizona Project ("CAP") canal;²⁶ and
- 12 6. Vistancia's ability to satisfy loan-to-value ratio requirements in its existing financing also
13 likely would be impacted because of the effect on appraisal value testified to by Mr.
14 Donald Duncan described below. Vistancia likely would have to come up with several
15 million dollars to meet existing loan requirements which could mean that Vistancia will
16 be unable to develop its property north of the CAP canal.²⁷

17 In addition to the foregoing project-specific testimony of Messrs. Abrahams and
18 Hammons, Surprise Grant Vista JVI, LLC witness Donald C. Duncan, an expert witness in the
19 field of real estate appraisals, testified at length as to how the inclusion of private real property
20 within the boundaries of a CEC transmission line corridor could substantially and adversely
21 impact such property in terms of its (i) marketability, (ii) developability, (iii) financiability, and
22 (iv) appraisal value;²⁸ and he confirmed how such inclusion (under Segment 5 of APS' Preferred
23 Route and APS' Alternative Route 3) could specifically and adversely impact both Vistancia's
24 Vistancia North master-planned community and Diamond Ventures' Saddleback Heights master-

25 ²⁵ See Tr. 2218, L. 6 - Tr. 2221, L. 6.

26 ²⁶ See Tr. 2204, L. 19-23; Tr. 2221, L. 23 - Tr. 2223, L. 4.

27 ²⁷ See Tr. 2223, L. 5 - Tr. 2225, L. 24.

28 ²⁸ See, generally, Tr. 1743, L. 17 - Tr. 1768, L. 15.

1 planned community.²⁹ Significantly, although he later unsuccessfully endeavored to retract his
2 original testimony, APS witness Mike DeWitt acknowledged the substantive merits of Mr.
3 Duncan's observations in this regard.³⁰

4 Succinctly stated, the inclusion of private real property within the boundaries of a CEC
5 transmission corridor has the effect of creating a "cloud" over that property; and, as Mr. Duncan
6 observed, it is "the mere imposition of the corridor itself" which gives rise to the impacts and
7 problems he identified.³¹ It is not a "cloud" that calls into question legal title to the property.
8 Nonetheless, it is a "cloud" of an adverse nature with identifiable adverse consequences, as Mr.
9 Duncan testified, which should not be disregarded when suitable transmission line routing
10 alternatives exist. That proved to be the situation in Siting Case No. 138 in several areas which
11 would have been adversely impacted by APS' originally proposed transmission line corridors;
12 and the aforesaid "cloud" phenomenon was clearly in the minds of the members of the Siting
13 Committee as they determined what ultimately became the Alternative Route 3 North corridor,
14 and the CEC language describing the same.³²

15 **D. The Alternative Route 3 North Corridor Proposed By the Peoria Entities Was**
16 **Designed to Enable APS to Achieve the Electrical Objectives of APS' TS-5 To TS-9**
17 **Transmission Project in a Manner Consistent With the Requirements of A.R.S. §§**
18 **40-360.06 and 40-360.07**

19 Diamond Ventures witness Ken Abrahams provided "overview" testimony for the Peoria
20 Entities in conjunction with their collective support for the Alternative Route 3 North corridor
21 proposal. In that regard, he indicated that the alignment of the corridor had been intentionally
22 studied and ultimately selected with the objective of presenting to the Siting Committee (and the
23 Commission) an alternative that was more "suitable" than either Segment 5 of APS' Preferred
24 Route or APS' Alternative Route 3, when examined and evaluated in the context of the CEC
25 decision-making factors prescribed in A.R.S. § 40-360.06. In addition, the corridor proposed by
the Peoria Entities was designed to enable APS to achieve the electrical objectives of its TS-5 to

²⁹ See Tr. 1760, L. 20 – Tr. 1761, L. 11; and Tr. 1761, L. 17 – Tr. 1765, L. 4, respectively.

³⁰ See Tr. 3047, L. 15 – Tr. 3048, L. 24; and Tr. 3055, L. 22 – Tr. 3057, L. 25.

³¹ See Tr. 1765, L. 17 – Tr. 1766, L. 7.

³² See, for example page 6, lines 2-3 and page 6, lines 7-10 of the CEC.

1 TS-9 transmission project in a manner at least equivalent (if not superior) to either of APS'
2 corridor proposals for the eastern portion of that project, in order that the "adequate, economical
3 and reliable supply of electrical power" criteria of A.R.S. § 40-360.07(B) might be satisfied as
4 well. In that regard, it is significant to note that APS did not contend that the Alternative Route 3
5 North corridor proposed failed to satisfy any of the aforesaid statutory objectives. To the
6 contrary, APS' witnesses in effect acknowledged that the Peoria Entities' proposal achieves such
7 satisfaction.³³

8 As summarized by Mr. Abrahams, the Alternative Route 3 North corridor would
9 accomplish the following:

- 10 1) Avoid physical encroachments and direct impacts upon existing land uses and
11 "existing [land use] plans" in the areas that would be traversed;³⁴ and ³⁵
- 12 2) Equitably distribute or "share" the burden of indirect (or visual) impact of APS'
13 transmission facilities among real property owners in the eastern portion of APS' TS-
14 5 to TS-9 transmission project;
- 15 3) Comply with Peoria's land use and planning vision for north Peoria;
- 16 4) Acknowledge and respect Maricopa County's scenic preference in the vicinity of SR
17 74;³⁶
- 18 5) Be entirely within the one-mile' wide transportation corridor contemplated by BLM
19 for BLM land on both sides of SR 74, and be consistent with BLM's historic practice
20 of accommodating EHV electric transmission lines on BLM land;
- 21 6) Mitigate regional, area and community impacts resulting from the presence of EHV
22 electric transmission facilities in the eastern portion of APS' transmission project, and
23 preserve regional and community values;

24 ³³ See, for example, Tr. 3097, L. 2-6 (Michael DeWitt).

25 ³⁴ See Tr. 2689, L. 18 – Tr. 2711, L. 1; and Exhibit DV-13, Slides 47L – 58L and Slides 28R – 34R.

³⁵ In that regard, the Arizona State Land Department ("ASLD") does not have any "existing plans" for ASLD acreage that would be encompassed within the Alternative Route 3 North corridor.

³⁶ The 500' set back from each side of SR 74 also would accommodate the Arizona Department of Transportation's ("ADOT") indicated desire for a 200' set back from SR 74 in connection with contemplated future widening of SR 74.

- 1 7) Provide an adequate and reliable alignment for APS' proposed transmission facilities;
2 and,
3 8) Provide a constructible and cost efficient alignment for such transmission facilities.

4 In addition, and as noted in Section I(B) above, the Peoria Entities presented the expert
5 witness testimony of Mr. Gary Rich (electrical engineering), Ms. Eleanor Gladding (biological
6 resources) and Dr. Suzanne Griset (cultural and historical resources) further demonstrating why
7 the Alternative Route 3 North corridor was more "suitable" than either Segment 5 of APS'
8 Preferred Route or APS' Alternative Route 3, when examined within the context of the decision-
9 making factors set forth in A.R.S. § 40-360.06(A) and (B).³⁷

10 **E. The Siting Committee's Adoption of the Alternative Route 3 North Corridor, As**
11 **Modified by The Siting Committee, Represents an Appropriate Application of the**
12 **Decision-Making Factors Prescribed in A.R.S. § 40-360.06 To The Evidentiary**
13 **Record in This Proceeding, and Should Be Affirmed By The Commission**

14 The Peoria Entities presented a comprehensive evidentiary case in support of the
15 Alternative Route 3 North corridor. The presentation addressed each of the CEC decision-
16 making factors prescribed in A.R.S. § 40-360.06. In addition, the presentation specifically
17 addressed why there is good reason to believe that BLM will favorably consider and timely grant
18 that right-of-way across BLM land which is included within the Alternative Route 3 North
19 corridor.³⁸ Further, as a part of closing statements, the Peoria Entities described at length why
20 APS' "manage the risk" approach to electric transmission line corridor selection was inconsistent
21 with good public policy and the provisions of A.R.S. § 40-360.06, when examined within the
22 circumstances surrounding this proceeding.

23 The Siting Committee presumably concluded that the Peoria Entities successfully
24 discharged that burden of proof and persuasion required of them, in order for the Alternative
25 Route 3 North corridor to be adopted instead of either Segment 5 of APS' Preferred Route or
26 APS' Alternative Route 3. For, as previously noted, the Siting Committee used the Alternative
27 Route 3 North corridor as its "starting point" in the deliberative process. Thereafter, and in

³⁷ See, for example, Exhibit DV-9, Slide 8La.

³⁸ Tr. 2518, L. 19 – Tr. 2530, L. 24; Tr. 2531, L. 1 – Tr. 2533, L. 8; Tr. 2535, L. 2 – Tr. 2537, L. 22.

1 response to concerns expressed and requests made by DGLC and Quintero, the Siting Committee
2 made two (2) modifications to the Alternative Route 3 North corridor, which were reflected in
3 the CEC granted on December 29, 2008.

4 An objective review of the Siting Committee's deliberations with respect to its adoption
5 of the Alternative Route 3 North corridor, as modified by the Siting Committee, readily discloses
6 that the Siting Committee fully and properly discharged its responsibilities pursuant to the
7 requirements of A.R.S. § 40-360.06. In that regard, and as previously noted, APS does not
8 otherwise contend. Accordingly, the decision of the Siting Committee adopting the modified
9 Alternative Route 3 North corridor should be affirmed by the Commission.

10 III.

11 **APS' PROPOSED "FALL-BACK CONTINGENCY" CORRIDOR AND APS' PROPOSED AUTOMATIC "DEFAULT" PROVISION ARE UNWARRANTED AND SHOULD BE SUMMARILY REJECTED**

12 **A. The Siting Committee Specifically Considered and Declined to Adopt Proposals of This Nature**

13 The "heart" of APS' Request For Review is to be found in the discussion set forth in
14 Section II at page 7, line 3 through page 13, line 4. With the exception of a slight narrowing in
15 one (1) area, APS is in effect asking the Commission to adopt APS' original Alternative Route 3
16 corridor as a "back-up contingency" corridor, in the event that it is unable to obtain the right-of-
17 way from BLM and ASLD contemplated by the Alternative Route 3 North corridor within three
18 (3) years. However, what APS fails to disclose is that the Siting Committee specifically
19 discussed whether such a "back-up contingency" provision should be included as a part of the
20 CEC, and concluded that such a provision was inappropriate in the factual circumstances of this
21 case. In that regard, the members of the Siting Committee clearly were (i) impressed by the
22 testimony of the Peoria Entities' witness Gordon L. Cheniae as to BLM's right-of-way
23 procedures and criteria, as well as the prospects for timely BLM action on a right-of-way
24 application from APS for the Alternative Route 3 North corridor, and (ii) desirous of incenting
25 APS to make a good faith effort to obtain the necessary right-of-way for that corridor, as

1 indicated by the following statements which were made as the Siting Committee considered
2 whether a “back-up contingency” provision should be adopted:

3 “CHMN. FOREMAN: So what are the thoughts of the
4 members of the Committee?

Member Haenichen.

5 MEMBER HAENICHEN: Thank you, Mr. Chairman. I
6 think we have heard enough testimony, credible testimony about
7 BLM and the way they do things that the probability is high that
8 they will cooperate with this route that we have selected. And I
9 think that the utility should make an earnest effort to do it, and if
10 all else fails they’ll have to come back on that segment. But I am
11 opposed to any alternative [“fall-back contingency” route] at this
12 time.³⁹

CHMN. FOREMAN: Member Palmer.

13 MEMBER PALMER: Thank you, Mr. Chairman. A
14 contingency affords an intervenor [and the Applicant] an
15 opportunity to have an out, and they will usually exercise that
16 opportunity if philosophically or fundamentally they’re opposed to
17 a particular route.

18 So what we’re doing [with a “fall-back contingency” route]
19 is creating a problem that doesn’t really exist, in my view. If we
20 approve a route and they’re objecting to it, they’re going to have to
21 deal with not only the issue of serving the public interest in the
22 best way they can, but also the politics, the reality of the politics.
23 And that is, if this Line Siting Committee has judiciously gone
24 through the evidence and has voted to support a particular
25 alignment, and it’s done the least harm and it’s mitigated whenever
possible, we’ve done our job. And if they [i.e. APS] become a
barrier to that by obstruction, they have to deal with the reality or
backlash of that, but if they had a contingency they wouldn’t. They
would just opt for the contingency.

CHMN. FOREMAN: Member Rasmussen.

1 MEMBER RASMUSSEN: I would just second what Mr.
2 Palmer stated. I fully agree with that point of view, and I would
3 oppose a contingency.” [Tr. 3527, L. 21 – Tr. 3529, L. 4]
4 [emphasis added]

39 To the knowledge of the Peoria Entities, this proceeding is the first line siting case in which a party has presented testimony from a former senior management-level employee of BLM as to BLM’s electric transmission line right-of-way procedures, and the prospects for a favorable outcome in connection with a contemplated right-of-way across BLM lands. In its Request For Review, APS endeavors to dismiss the forcefulness of the Peoria Entities’ witness Gordon L. Cheniae in this regard, by simply quoting his acknowledgment that ultimately “BLM will do what it wants” in connection with a given right-of-way application. [APS Request For Review at page 5, lines 7-9] However, Siting Committee member Haenichen’s above-quoted remarks aptly capture the high degree of credibility and weight that he and other members of the Siting Committee accorded to Mr. Cheniae’s testimony regarding BLM, and his high degree of optimism as to favorable action by BLM.

1 * * *

2 “MEMBER NOLAND: Mr. Chairman, I think that

3 Diamond Ventures did quite a bit of work on that north alternative

4 that really will be of use to APS in making their application to

5 BLM. But I join my colleagues to my right -- your left, my right --

6 in [that] I would not support any alternative [or “fall-back

7 contingency”] to the alternative [3] north alignment.” [Tr. 3535, L.

8 16-21] [emphasis added]

6 * * *

7 “MEMBER HOUTZ: Well, my experience in EIS’s is

8 during the scoping process they’ll take comments, they will come

9 out with a preferred alternative to analyze with several alternatives,

10 including a no option. And probably in that set of options to

11 analyze there will be one south of State Route 74.

12 But at the end of the NEPA process, it’s whether they can

13 justify the preferred option. And if the state has instructed that this

14 be the preferred route from a state perspective, it’s just finding the

15 environmental justification to do that route.

16 I guess I’m coming around to agreeing with my fellow

17 members on the right that maybe we don’t need a [“fall-back”]

18 contingency [route] as much as there may be a need to have a

19 trigger of if something like that [i.e. a BLM denial], there’s an

20 automatic coming back to the Committee.” [Tr. 3537, L. 23 – Tr.

21 3538, L. 13] [emphasis added]

15 * * *

16 “CHMN. FOREMAN: All right. I offer no legal opinion

17 on which would be appropriate or which would be legally

18 defensible, but you would have two routes [for coming back to the

19 Committee]. One would be amend the old CEC, the other would

20 be to apply for another.

21 MEMBER WHALEN: Hearing that, Mr. Chairman, then I

22 would not be in support of a contingency at this time.

23 CHMN. FOREMAN: Okay. So I’m taking it that there’s no

24 one that wants to make a motion [for a “fall-back contingency”

25 route]? All right. Well, then, let’s move on to the conditions. And

let’s start with, I guess we can go through the conditions one at a

time, and that’s probably the best.” [Tr. 3539, L. 22 – Tr. 3540, L.

9] [emphasis added]

23 In connection with the foregoing, it is apparent that the members of the Siting Committee

24 also concluded that an automatic “default” provision of the type proposed by APS in Section II at

25 page 12, lines 21-25 of its Request For Review was inappropriate in this case. Rather, in the

1 event that the right-of-way contemplated by Alternative Route 3 North ultimately should prove
2 to be unobtainable, then the question of what alternative route might be appropriate could be
3 determined by either an APS request pursuant to A.R.S. § 40-252 to amend the CEC granted in
4 Siting Case No. 138; or, alternatively, such inquiry could be conducted by means of an APS
5 application for a new CEC. Under either approach, proper consideration could be given as to
6 selection of an appropriate route under the then prevailing factual circumstances. Whereas,
7 under APS' "fall-back contingency" and automatic "default" provisions, it is arbitrarily assumed
8 that all conditions surrounding APS' Alternative Route 3 remain unchanged or "static" during
the intervening passage of time. Experience effectively refutes that assumption.

9 Moreover, there is no evidence in the record to support APS' proposal of three (3) years
10 as the "trigger" date at which it's proposed "back-up contingency" corridor would automatically
11 replace Alternative Route 3 North as the authorized transmission corridor for the eastern portion
12 of the TS-5 to TS-9 transmission project. To the contrary, the record discloses that during the
13 evidentiary hearings APS revised (or "slipped") the projected "in-service" date for the project
14 from 2012 to 2014 or 2016, thereby moving the "in-service" date 5 to 7 years into the future
15 from the end of 2008;⁴⁰ and, depending on the state of the economy in general and APS'
16 financial circumstances in particular, the projected "in-service" date might well be extended
17 further into the future. In that regard, there is no fixed "need" deadline against which APS is
18 working. In fact, as APS' Manager of Transmission Planning acknowledged during cross-
19 examination, when questioned as to the current status of other transmission facilities which
comprise the metropolitan Phoenix "loop" of which the TS-5 to TS-9 project would be a part:

20 " . . .there are a number of dots [i.e. substations] and [transmission]
21 lines not only yet-to-be-connected, but yet-to-be constructed." [Tr.
1123, L. 2-7]

22 Finally, it should be noted that APS' purported concern regarding favorable and timely
23 BLM action on a right-of-way request for Alternative Route 3 North might be non-existent, had
24 APS requested that BLM include a utility corridor within the area in question as a part of BLM's

25 ⁴⁰ See Tr. 986, L. 10-17; and Tr. 1112, L. 17 – Tr. 1114, L. 1.

1 recent modification of its Resource Management Plan ("RMP"). APS had advised BLM on three
2 (3) previous occasions (in November 2005, July 2006, and February 2008) as to the future
3 possibility that APS would be proposing to construct an EHV electric transmission line similar to
4 the one now in question through the area now in question.⁴¹ Those written communications from
5 APS were submitted to the Departments of Energy, Interior (which includes BLM) and
6 Agriculture within the context of a Programmatic Environmental Impact Statement ("PEIS") that
7 those Departments were preparing in connection with contemplated future electric transmission
8 lines in the western United States. However, APS inexplicably failed to advise the local BLM
9 office as to the fact that APS was continuing to consider routing an EHV electric transmission
10 line through the area in question, when BLM subsequently commenced consideration of revising
11 its RMP for the Phoenix area and requested input from electric utilities in the area. Moreover, as
12 the evidentiary record in this proceeding discloses, APS did not advise BLM's Phoenix office of
13 the need for a utility corridor along SR74.⁴² In fact, it appears that BLM first learned of the TS-5
14 to TS-9 transmission project during March, 2008, or only a few months before APS filed the
15 CEC Application which resulted in this proceeding.⁴³ Yet, APS is now attempting to avail itself
16 of an implied "problem" it played a role in creating.

17 BLM issued its Proposed RMP and Final Environmental Impact Statement on August 8,
18 2008.⁴⁴ The City of Peoria submitted a protest to the RMP dated September 5, 2008 and
19 requested that BLM evaluate the alternative utility or multi-use designation for the corridor along
20 SR74 and re-designate the corridor accordingly.⁴⁵ Congressman Trent Franks, whose district
21 includes the City of Peoria, sent a letter dated November 10, 2008 to BLM's Washington D.C.
22 office expressing his support for Peoria's protest and request for a utility or multi-use corridor
23 designation within Peoria on the BLM land adjacent to SR74.⁴⁶

24 ⁴¹ See Tr. 579, L. 3 - Tr. 589, L. 3 and Exhibits V-1, V-2 and V-3.

25 ⁴² See Tr. 364, L. 17 - Tr. 368, L. 8.

⁴³ See Tr. 363, L. 14 - Tr. 364, L. 4.

⁴⁴ 73 Fed. Reg. 46333

⁴⁵ Exhibit P-24 (attached hereto as Attachment "2").

⁴⁶ Exhibit V-5 (attached hereto as Attachment "3").

1 **B. APS' "Fall-Back Contingency" Conflicts with Peoria's Existing Land Plans**

2 As previously discussed in Section II(B) above, and as the record in this proceeding
3 indicates, APS' Alternative Route 3 (essentially what APS now is seeking as its proposed "back-
4 up contingency") conflicts with existing land use plans that have been approved by Peoria and
5 have been in place for many years. The Siting Committee consciously and properly concluded
6 that it would not be appropriate to approve a route that would conflict with such plans, and the
7 Commission should affirm that conclusion and reject APS' "back-up contingency" proposal.

8 **C. APS' Proposed Inclusion of Private Land Planned and Approved for Development**
9 **Within APS' "Fall-Back Contingency" Corridor Creates Adverse Impacts Upon**
10 **and a "Cloud" Over Such Land**

11 As previously discussed in Section II(C) above, and as the record in this proceeding
12 indicates, the inclusion of private real property within the boundaries of a CEC has the general
13 effect of creating an adverse "cloud" over that property. As Surprise Grand Vista witness
14 Donald Duncan testified, the adverse impacts arise from "the mere imposition of the corridor
15 itself."⁴⁷ In addition, and with specific reference to Saddleback Heights, adoption of APS'
16 proposed "back-up contingency" provision would have the substantial adverse effects on the
17 northern portion of the Saddleback Heights master-planned community which Mr. Abrahams
discussed in his testimony. The Siting Committee consciously and properly concluded that the
imposition of such a burden was unwarranted in the circumstances of this proceeding; and the
Commission should affirm that conclusion and reject APS' "back-up contingency" proposal.

18 **D. APS Presents No New Arguments In Support of Its "Fall-Back Contingency" and**
19 **"Default" Provision Proposals**

20 The arguments set forth at page 7, line 3 – page 13, line 4 in Section II, subsections (A)
21 through (C) of APS' Request For Review are not new. At various times during the Siting
22 Committee hearings, APS in essence made these same types of arguments as it endeavored to
23 defeat favorable Siting Committee consideration of the Alternative Route 3 North corridor.
APS' arguments lacked merit then, and they continue to do so now.

24

⁴⁷ See Tr. 1765, L. 17 – Tr. 1766, L. 7.
25

1 First, APS' opposition to a 500' "buffer" (on each side of SR 74 in the Alternative Route
2 3 North corridor) conveniently ignores the fact that the 'buffer" was specifically intended to
3 accommodate the expressed desire of ADOT and Maricopa County that the proposed
4 transmission facilities not be located within 200' or 500', respectively, of the current boundaries
5 of SR 74. Those desires were a matter of interest to several members of the Siting Committee;
6 and Alternative Route 3 North fully accommodates those desires. APS' proposed "fall-back"
7 contingency corridor effectively ignores them. In fact, Maricopa County Supervisor Max W.
8 Wilson wrote to Mr. Mike DeWitt of APS on November 6, 2008 and informed Mr. DeWitt that
9 "Maricopa County is not opposed to the routing of the transmission line east of 179th Avenue
10 along State Route 74 within the 'Alternative 3-North Corridor' proposed by adjoining
jurisdictions."⁴⁸

11 Second, as discussed above in Section III (A), the Siting Committee was fully aware of
12 the reliance it was placing upon BLM to conduct an informed and objective analysis and
13 evaluation when BLM processed and acted upon the right-of-way request contemplated by
14 Alternative Route 3 North. The members of the Siting Committee believed such reliance was
15 well-placed,⁴⁹ and specifically concluded that the type of "fall-back contingency" provision
advocated by APS was inappropriate in the circumstances of this particular case.

16 Third, APS' legal analysis and conclusions regarding the requirements of the National
17 Environmental Policy Act ("NEPA"), and BLM's responsibilities and procedures thereunder, are
18 incomplete and incorrect. Despite the misimpression created by APS, BLM does not require or
19 need a "fall-back contingency" route to conduct an alternatives analysis under NEPA. For
20 externally generated requests, such as right-of-way applications, BLM's NEPA Handbook states
21 that "the range of alternatives will typically include at least denying the request (No Action);

22 ⁴⁸ Exhibit A-17 (attached hereto as Attachment "4").

23 ⁴⁹ In that regard, former BLM Phoenix District Office Manager Gordon L. Cheniae testified as follows:

24 "I think that the likelihood is very high that BLM, once they process the
25 application, goes through the appropriate NEPA analysis, that they would come
to the conclusion to both amend their [Resource Management] plan and grant
the right-of-way [for Alternative Route 3 North]. That's my professional
opinion." See Tr. 2547, L. 8-12, in particular; and, Tr. 2546, L. 9 – Tr. 2547 L.
16. [emphasis added]

1 approving the request as the proponent proposed; or approving the request with changes BLM
2 makes to the proponent's proposal."⁵⁰ BLM's NEPA Handbook further provides that the type of
3 changes that BLM will evaluate in the alternatives analysis includes, "[t]he proponent's proposal
4 with additional or different design features recommended by BLM to reduce environmental
5 effects."⁵¹ And even then, the analysis "need not discuss remote and conjectural environmental
6 consequences, but only every reasonable alternative."⁵²

7 Moreover, BLM states that evaluation of "alternatives not within BLM's jurisdiction
8 would not be reasonable."⁵³ BLM only would consider alternatives outside of its jurisdiction in
9 "exceptional" circumstances, and "probably limited to the broadest, most programmatic EISs
10 that would involve multiple agencies."⁵⁴ A routine right-of-way application for a utility
11 transmission line to be placed in an existing transportation corridor along a state highway likely
12 will not be considered by BLM to be an "exceptional" circumstance. As a result, the
13 Commission's approval of a CEC without a "fall-back contingency" route will not prevent BLM
14 from evaluating reasonable alternatives in accordance with both NEPA requirements and BLM's
15 internal policies and practices.

16 Fourth, APS' discussion conveniently ignores the fact that BLM's currently proposed
17 RMP provides for the establishment of a one-mile wide transportation corridor on that BLM land
18 which is on both sides of SR 74 in the vicinity of the Alternative Route 3 North corridor. Thus,
19 APS is in error when it suggests that there is no development contemplated on the BLM land
20 here in question.⁵⁵ Moreover, that portion of the Alternative Route 3 North corridor which is
21 located on BLM land, both north and south of SR 74, is entirely within the boundaries of BLM's

22 ⁵⁰ Bureau of Land Management, NEPA Handbook, H-1790-1, p. 50, January 30, 2008 [hereinafter "NEPA Handbook"], excerpts of which are attached hereto as Attachment "5." The Commission may take official notice of these materials pursuant to A.A.C. R14-3-109T.4. A full copy of the NEPA Handbook is available at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf.

23 ⁵¹ Id.

24 ⁵² Havasupai Tribe v. U.S., 752 F. Supp. 1471, 1489-90 (D.Ariz. 1990).

25 ⁵³ NEPA Handbook at 50 (internal citations omitted).

⁵⁴ Id.

⁵⁵ As previously noted, ASLD does not have any "existing plans" for the ASLD land which is encompassed within the Alternative Route 3 North corridor. Moreover, the thrust of the opposition set forth in ASLD's Request For Review appears to be directed towards the Siting Committee's decision in relation to APS' Segment 3 corridor, and not the modified Alternative Route 3 North corridor. See ASLD Request For Review at page 3, lines 16-21.

1 contemplated transportation corridor. Accordingly, APS' attempt to suggest that BLM will be
2 predisposed to oppose any electric transmission line on its land adjacent to SR 74 is without an
3 evidentiary foundation. In fact, Peoria Entities' witness Gordon L. Cheniae testified that such
4 use would be entirely consistent with BLM land use practices.⁵⁶

5 In that regard, implicit in APS' discussion of its "fall-back contingency" proposal is an
6 assumption that BLM would make a distinction between BLM land north and south of SR 74 in
7 connection with BLM's consideration of an electric transmission line right-of-way application.
8 However, there is nothing in the evidentiary record of this proceeding to support that assumption.
9 To the contrary, as noted above, the record discloses (i) that BLM is in the process of
10 establishing a transportation corridor which will include that BLM land on both sides of SR 74
11 encompassed within the Alternative Route 3 North corridor, and (ii) that BLM will treat such
12 land similarly for purposes of the right-of-way application here in question.⁵⁷ Moreover,
13 adoption of APS' "back-up contingency" proposed corridor would substantially and adversely
14 impact land which is the subject of "existing plans," similar to the direct impact that would have
15 occurred with adoption of APS' Segment 5. The Alternative Route 3 North corridor does not
16 entail such impacts.

17 Fifth, APS' effort to suggest an analogy between the instant proceeding and Siting Case
18 No. 111 is without merit. It is true that each case includes the review of a transmission line
19 right-of-way request by a federal governmental agency. However, the meaningful analogy ends
20 at that juncture. More specifically, Siting Case No. 111 is surrounded by a background of
21 several additional (previous and subsequent) Commission proceedings relating to reliability of
22 electric service issues in Santa Cruz County, Arizona; and various means by which that problem
23 might be addressed.⁵⁸ The Gateway 345 kV and 115 kV Transmission Project ("Gateway
24 Project") transmission facilities which were the subject of the CEC granted in Siting Case No.
25

⁵⁶ See Tr. 2545, L. 15-21.

⁵⁷ See Tr. 2541, L. 2-4; Tr. 2542, L. 1 – Tr. 2543, L. 1; and, Tr. 2544, L. 20 – Tr. 2545, L. 21.

⁵⁸ See, for example, Decision No. 67506 (January 20, 2005) in Docket No. E-01032A-99-0401 [reliability of service], and Decision No. 67509 (January 20, 2005) in Docket Nos. L-00000C-01-0111 and L-00000F-01-011 [Siting Case No. 111].

1 111 was only one (1) of such means. Several alternative transmission systems were suggested in
2 a subsequent proceeding conducted by the Commission, after it had re-opened the underlying
3 dockets in Siting Case No. 111; and, to date, the Commission has not issued a final decision on
4 the matter.⁵⁹

5 Moreover, a central purpose of the Gateway Project was a 345 kV transmission line
6 which Tucson Electric Power Company ("TEP") desired to construct, in order to sell electricity
7 to Mexico. However, it is the understanding of the Peoria Entities that TEP has never executed a
8 firm power supply agreement with the Comision Federal de Electricidad ("CFE") of Mexico; and
9 TEP's then Chief Executive Officer (James S. Pignatelli) testified in a subsequent proceeding
10 that it would make no economic sense for TEP to construct the proposed 345 kV transmission
line without a firm power supply contract with CFE.⁶⁰

11 To date, the aforementioned Gateway Project has not been constructed. However, the
12 lack of activity is not simply because of an inability to obtain a right-of-way from the Forest
13 Service, as APS endeavors to imply. To the contrary, there has been a multiplicity of factors,
14 including a re-examination by the Commission of various alternatives by means of which the
15 electrical needs of Santa Cruz County might be served, and the absence of a Commission
16 decision following such re-examination. Further, given the ongoing absence of a firm power
17 supply contractual arrangement with CFE in Mexico, it is conceivable that TEP's desire to
18 finance and construct the Gateway Project's 345 kV facilities has steadily waned, if not
19 disappeared, with the passage of time. In that regard, for several years now, the Siting
20 Committee's calendar has shown a "TBD" [to be determined] or "date unknown" date for the
21 anticipated filing by TEP of further pleadings in Siting Case No. 111.

22 ⁵⁹ More specifically, on December 15, 2005, Administrative Law Judge ("ALJ") Jane Rodda issued a Recommended
23 Opinion and Order ("ROO") in Docket No. E-01032A-99-0401. Thereafter, Exceptions were filed by various
24 parties. On August 3, 2006, as a result of a Commission Open Meeting discussion on February 6, 2006, ALJ Rodda
issued an Amended ROO. Thereafter, Comments on the Amended ROO were filed. However, the Commission has
not since acted on ALJ Rodda's Amended ROO or taken any other definitive dispositive action in relation to Siting
Case No. 111.

25 ⁶⁰ See Docket No. E-04230A-03-0933 hearing transcript at page 282, line 4 – page 283, line 2.

1 Thus, for the above-indicated reasons, APS' attempt to predicate an argument for its
2 "back-up contingency" proposal on the basis of Siting Case No. 111 is without merit when
3 considered in the circumstances of this proceeding.

4 Sixth, in its endeavor to support the alleged "burdensomeness" that a subsequent
5 proceeding might impose, in the event of a future denial of the right-of-way contemplated by
6 Alternative Route 3 North, APS conveniently ignores the fact that the Siting Committee
7 determined that that particular transmission corridor was the most "suitable" for the eastern
8 portion of the TS-5 to TS-9 transmission project when considered in light of the statutory
9 decision-making factors set forth in A.R.S. § 40-360.06 and the evidentiary record in this case.
10 Moreover, APS also conveniently assumes that its proposed "fall-back contingency" route would
11 be "suitable" for adoption at a later point in time, in the event the right-of-way necessary for
12 Alternative Route 3 North cannot be acquired. However, as previously noted, experience teaches
13 us that surrounding circumstances change with the passage of time. In fact, and as may be noted
14 from the quotations included in Section III(A) above, it would be reasonable to infer that that
15 was one of the reasons why the Siting Committee concluded a pre-determined "fall-back
16 contingency" route was inappropriate, and thus should not be included in the CEC.

15 IV.

16 THE MODIFICATIONS TO THE CEC PROPOSED AND 17 DISCUSSED BY APS IN SECTIONS I AND III OF ITS REQUEST 18 FOR REVIEW ARE APPROPRIATE FOR CONSIDERATION

18 A. Section I Modification

19 APS is correct in its observation that the western boundary of Village "A" (residential) of
20 the Saddleback Heights master-planned community and the eastern point of Village "E"
21 (commercial) of Saddleback Heights are contiguous to one another in the vicinity of the 163rd
22 Avenue alignment immediately south of SR 74. As a consequence, the current language at page
23 6, lines 7-10 of the CEC, which excludes any portions of Village "A" and Village "E" in the
24 vicinity of the 163rd Avenue alignment from the approved corridor, creates a legal prohibition to
25 APS' ability to construct the transmission line at that particular point as it would cross SR 74

1 from south to north. However, that current legal impediment easily can be rectified by
2 modifying the CEC to adopt the language proposed by APS at page 6, lines 16-22 of APS'
3 Request For Review.

4 More specifically, APS' proposed language resolves the legal impediment to APS' ability
5 to actually construct the transmission line, which is created by the current language of the CEC
6 proposed to be replaced. Second, and importantly, it preserves the desire of the Siting
7 Committee that the adverse direct impacts resulting from a CEC transmission corridor not be
8 imposed on land which has been officially approved for development. In this instance, that land
9 is Village "A" (residential) of the Saddleback Heights master planned community. This is
10 accomplished by (i) delineating the eastern boundary of the 1,000' corridor to be the center line
11 of the 163rd Avenue alignment, which eliminates any prospect of a corridor overlay on Village
12 "A," and (ii) eliminating the corridor exclusion language currently set forth at page 6, lines 5-10
13 of the CEC. Third, APS' proposed language mitigates as much as possible the impact of a CEC
14 corridor overlay on Village "E" (commercial) of Saddleback Heights in this particular area, by
15 expressly providing that no transmission supporting structure(s) may be constructed upon the
16 Village "E" property, while at the same time allowing for a spanning or overhang of that
17 property by the transmission conductors. In so doing, APS' proposed language is consistent with
18 the aforementioned desire of the Siting Committee to avoid the adverse direct impact(s) and
19 associated "cloud" of a CEC upon the "existing [land use] plans" of Peoria and Diamond
20 Ventures, as contemplated by A.R.S. § 40-360.06(A)(1).

21 **B. Section III Modification**

22 For the reasons discussed in Section III(A) of APS' Request For Review, the Peoria
23 Entities also believe the change in CEC language specifically proposed by APS at page 15, line
24 22 of its Request For Review is appropriate, in the event that the Commission should conclude
25 that the corridor widening proposed by APS does not constitute a "substantial change." In that
regard, the Peoria Entities do not have a position on the "substantial change" question discussed
in Section III(B) of APS' Request For Review.

However, in indicating their collective support for APS' proposed language modification in this instance, the Peoria Entities do so with the understanding that the language currently appearing at page 6, lines 2-4 of the CEC would remain intact. That language provides (and would continue to provide) that the portion of the transmission corridor approved at page 5, line 25- page 6, line 2 of the CEC would not include any portion of the aforesaid Village "E" property. Such an exclusion is (and would continue to be) consistent with the intent of the Siting Committee.

CONCLUSION

Thus, for all of the foregoing reasons, the CEC language modifications proposed by APS in Section II at page 12, lines 1-25 of its Request For Review should be rejected. As previously noted, the Peoria Entities do not object to the CEC language modifications requested by APS in Section I at page 6, lines 15-22 and in Section III at page 15, line 22 of APS' Review For Review.

Dated this 12th day of February, 2009.

Respectfully submitted,

Stephen J. Burg, Chief Assistant City Attorney
Office of the City Attorney
City of Peoria

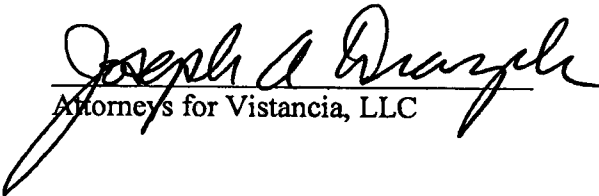
Stephen J. Burg
Attorney for the City of Peoria, Arizona

Lawrence V. Robertson, Jr.

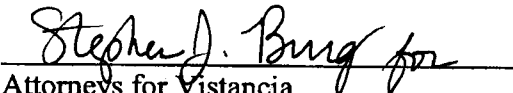
Laurence B. Rabinowitz, Jr.
Attorney for Diamond Ventures, Inc.

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Attorneys for Vistancia, LLC

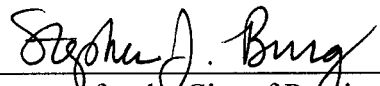
Steve Wene
Moyes Sellers & Sims


Attorneys for Vistancia
Community Associations

1 I hereby certify that I have this day served the foregoing documents on the all the parties
2 of record in this proceeding by mailing a copy thereof, properly address with first class postage
3 prepaid to all the parties listed below.

4 Dated this 12th day of February, 2009.

5 Stephen J. Burg, Chief Assistant City Attorney
6 Office of the City Attorney
7 City of Peoria

8 
9 _____
10 Attorney for the City of Peoria, Arizona

11 The original and twenty-five (25) copies
12 of the foregoing Joint Brief
13 will be filed on February 12, 2009 with:

14 Docket Control
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 A copy of the foregoing Joint Brief has been
19 emailed/mailed this same date to:

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Intervenor for Town of Buckeye

16 Charles W. Civer
Sharie Civer
17 42265 N. Old Mine Road
18 Cave Creek, Arizona 85331-2806
Intervenors on behalf of DLGCII and Lake Pleasant Group

19 A copy of the foregoing Joint Brief has been
20 mailed this same date to:

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22 Phoenix, Arizona 85007
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4 Mike Palmer
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Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
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Phoenix, Arizona 85007

List of Attachments to Peoria Entities' Joint Brief

- Attachment 1 Exhibit P-12 (City of Peoria diagram showing the APS Corridors for Segments 4 & 5 and Alternative 3 through the northern Peoria land plans)
- Attachment 2 Exhibit P-24 (September 5, 2008 letter from Carl Swenson, City Manager, City of Peoria to Brenda Hudgens-Williams, Director, BLM Re: Protest to the Agua Fria National Monument and Bradshaw-Harquahala Proposed Resource Management Plan and Final Environmental Impact Statement, June 2008 [attachments to the letters introduced as other Exhibits])
- Attachment 3 Exhibit V-5 (November 10, 2008 letter from U.S. Congressman Trent Franks to Brenda Hudgens-Williams, Director, BLM)
- Attachment 4 Exhibit A-17 (November 6, 2008 letter from Maricopa County Supervisor Max W. Wilson to Mike DeWitt, Arizona Public Service Project Manager Re: TS-5 to TS-9 500/230 kV Transmission Line Project)
- Attachment 5 U.S. Bureau of Land Management's "National Environmental Policy Act Handbook H-1790-1" dated January 30, 2008 (9 Pages excerpted)

1

2



City of Peoria

City Manager's Office

8401 West Monroe Street, Peoria, Arizona 85345
Phone: 623-773-7300 Fax: 623-773-7309

September 5, 2008
Via E-Mail and Regular Mail

Director (210)
Attention: Brenda Hudgens-Williams
P.O. Box 66538
Washington, D.C. 20035
Brenda_Hudgens-Williams@blm.gov

Re: Protest to the Agua Fria National Monument and Bradshaw-Harquahala
Proposed Resource Management Plan and Final Environmental Impact
Statement, June 2008 (the "RMP")

Dear Director:

Pursuant to 43 CFR § 1610.5-2, the City of Peoria, Arizona ("Peoria") submits this protest to the above-referenced RMP. Following the format prescribed by regulations, Peoria provides the following information:

- (i) Name: Carl Swenson, City Manager
City of Peoria, Arizona
Address: 8401 West Monroe Street
Peoria, Arizona 85345
Telephone: (623) 773-7300
Interest: As the City Manager for Peoria, Mr. Swenson is responsible for overseeing the day-to-day administrative operations of the municipal government. As described in the RMP,¹ Peoria was a participant in the RMP planning process because BLM sought Peoria's input during the development of the RMP. Peoria's interests may be adversely affected by the RMP because a portion of the land governed by the RMP is within the Peoria city limits. In addition, because the RMP establishes only a transportation corridor rather than a utility or multi-use corridor along State Route 74, Peoria's land use plans calling for the preservation of open space, including roadless areas in northern Peoria, will be threatened or violated by the expansion of utility infrastructure in the vicinity of the BLM land unless that expansion occurs along State Route 74.

¹ Agua Fria National Monument and Bradshaw-Harquahala Proposed Resource Management Plan and Final Environmental Impact Statement, June 2008, volume 1, page 35 [hereinafter, "RMP"].

- (ii) Issue(s) Being Protested:
Peoria disagrees with the RMP's failure to establish a utility or multi-use corridor within Peoria on the BLM land adjacent to State Route 74.
- (iii) Statement of the Part(s) of the Plan Being Protested:
The RMP designates a transportation corridor along State Road 74 through Peoria.² Peoria believes that this transportation corridor should be designated instead as a multi-use corridor to accommodate future electric transmission lines that are 115 kV or greater. BLM's statement³ that it did not know of any planned utility needs in the area is incorrect.

The following specific parts of the Plan are protested:

- Map: 2-79
 - Chapters: 2, 3, and 4
 - Sections: 2.6.2.1, 2.6.2.2, 2.7.1.2, 2.7.3.2, 3.3.4, and 4.7.2
 - Pages: 195-196, 206-208, 239-240, 276, 410-411, and 462-463
- (iv) Documents and Discussions in the Record:
- a. Documents:
1. Letter dated November 28, 2005 from Karilee S. Ramaley, Senior Attorney, Pinnacle West Law Department to Julia Souder, U.S. Department of Energy – APS submitted written comments through the planning process, which BLM co-leads, for utility and multi-use corridor designation in the western states known as the "West-Wide Energy Corridor PEIS" ("PEIS"). APS also provided oral comments at a public scoping meeting on November 3, 2005 in Phoenix, Arizona. In the letter, APS indicated that it "hopes to continue to be a partner with the Departments of Energy, Interior, and Agriculture as they complete the preparation of the PEIS."⁴ APS also stated that it "has worked successfully with various federal agencies in the past to develop utility corridors that have been incorporated into the agencies' Resource Management Plans."⁵ APS "strongly urge[d] the Department to designate specific energy corridors through the PEIS process" and suggested that "wherever possible, such corridors should follow existing linear features

² RMP, Map 2-79.

³ RMP, volume 1, page 196.

⁴ Letter dated November 28, 2005 from Karilee S. Ramaley, Senior Attorney, Pinnacle West Law Department to Julia Souder, U.S. Department of Energy ("November 28, 2005 letter"), page 1, attached to this protest as Attachment 1.

⁵ November 28, 2005 letter, pages 1-2.

(e.g. highways, U.S. Forest Service roads, and existing utility lines)."⁶ Among many other comments contained in the letter, APS noted that "[i]t is essential that the Departments work with other affected jurisdictions (states, local communities, and tribes) to enhance coordination and timely permitting of transmission lines."⁷ Prior to the time that APS wrote this comment letter, it added to its 10-year plan a new 500 kV transmission line to connect TS-5 in the City of Buckeye to TS-9 in Peoria. In its letter to BLM, APS attached a map that appears to depict the line, along with many other requested corridors and planned lines in the Phoenix and Peoria metropolitan areas.

2. Letter dated July 10, 2006 from Karilee S. Ramaley, Senior Attorney, Pinnacle West Law Department to Julia Souder, U.S. Department of Energy – After the Departments of Energy, Interior, and Agriculture produced "Preliminary Draft Maps of Potential Energy Corridors" in early June of 2006, APS responded as a follow up to its first letter, public comments, and additional information that it had provided to the Departments. APS reiterated that it serves one of the fastest-growing areas of the country.⁸ APS also reemphasized that it has worked with BLM in the past on electric transmission line siting and that it often has sited such lines along highways.⁹
3. Letter dated February 13, 2008 from APS Project Managers Gregory Bernosky, Paul Herndon, and Mike DeWitt to Argonne National Laboratory re West-Wide Energy Corridor PEIS – This is the third comment letter subsequent to the November 28, 2005 and July 10, 2006 letters concerning the PEIS.¹⁰ Note that by this time APS had been involved in a public process since 2007 to locate a route for one 500 kV transmission line and one 230 kV transmission line, during which APS identified to the public a route along State Route 74 through BLM land and Peoria that is very similar to the route proposed in its comments submitted to BLM in 2005 and 2006.
4. Letter dated March 18, 2008 from APS Project Manager Mike DeWitt to Steve Cohn, BLM Field Manager – In this letter APS reminded BLM that APS had identified a transmission line route along State Route 74 and

⁶ November 28, 2005 letter, pages 3.

⁷ November 28, 2005 letter, page 3.

⁸ Letter dated July 10, 2006 from Karilee S. Ramaley, Senior Attorney, Pinnacle West Law Department to Julia Souder, U.S. Department of Energy ("July 10, 2006 letter"), page 1, attached to this protest as Attachment 2.

⁹ July 10, 2006 letter, page 4.

¹⁰ Attached to this protest as Attachment 3.

confirmed that a meeting had been set between APS and BLM on March 21, 2008.¹¹

5. Letter dated June 18, 2008 from BLM Field Manager Steve Cohn to Jennifer Frownfelter, URS Corporation – After noting the history of the RMP and PEIS public comment processes, and despite APS's submission of the letters described above, BLM stated to APS that "[a]t no time in either of these two processes has the need for a utility corridor been identified along SR 74."¹² BLM indicated that such a corridor would require an amendment to the RMP, but BLM was silent on whether it would be reviewing its draft RMP to consider amending it to establish a utility or multi-use corridor.¹³

Copies of the foregoing letters are enclosed as Attachments 1-5.

b. Discussions:

1. As noted earlier, Peoria was a participant in the RMP planning process because BLM sought Peoria's input during the development of the RMP.¹⁴ At the time that such input was sought, Peoria was not aware that APS was planning to construct one 500kV transmission line and one 230kV transmission line through Peoria to connect substations known as "TS-5" and "TS-9." Therefore, Peoria did not submit comments to BLM at the time specifically concerning the inclusion in the RMP of a utility or multi-use corridor.
2. On March 21, 2008, representatives of APS and BLM met to discuss, in part, the impacts of siting the new transmission lines along State Route 74.
3. When Peoria became aware that APS planned to construct the two lines through Peoria but had not secured from BLM the inclusion in the RMP of a utility or multi-use corridor, then Peoria requested and was granted a meeting with BLM staff to discuss the issue on July 3, 2008. Again, despite APS's letters to the contrary, BLM informed Peoria that APS had not notified BLM of its need for a utility corridor adjacent to State Route

¹¹ Attached to this protest as Attachment 4.

¹² Letter dated June 18, 2008 from BLM Field Manager Steve Cohn to Jennifer Frownfelter, URS Corporation (June 18, 2008 letter), page 1, attached to this protest as Attachment 5.

¹³ The June 18, 2008 letter makes reference to two other prior letters from Jessica Frownfelter on behalf of APS to BLM – letters dated May 14, 2008 and June 6, 2008. Peoria has not seen copies of these letters, so they are not included as attachments to this protest.

¹⁴ RMP, volume 1, section 1.4.4, page 35 and Appendix B, page 943.

74. BLM also informed Peoria that it was finalizing the proposed RMP and would not consider amending the proposed RMP to add such a corridor.

c. Concise Statement Explaining Why the State Director's Decision is Believed to be Wrong:

- The RMP violates the Energy Policy Act of 2005 ("Act") because BLM failed to plan for electric utility expansion in Peoria and the region, an area where such expansion reasonably could be anticipated. Pursuant to the Act, certain federal agencies, including the Department of Interior, are required to facilitate the development and extension of energy projects across federal lands.¹⁵ Such agencies also are required to consider the need for upgraded and new transmission facilities to improve the overall soundness of the national electricity grid through improved reliability, less congestion, and enhanced capability.¹⁶ In the RMP BLM failed to (i) evaluate the alternative of designating a utility or multi-use corridor adjacent to State Route 74; (ii) consider the written comments submitted by APS addressing the need for upgraded or expanded electricity transmission facilities within the planning area and (iii) consider specific additional information provided to it by APS concerning APS's proposal to consider constructing transmission lines adjacent to State Route 74 in or near Peoria. These failures are in direct contradiction to the mandate of the Act.
- Because BLM failed to consider the viable alternative of designating a multi-use corridor along State Route 74, the environmental impact statement ("EIS") in the RMP is inadequate and noncompliant with the National Environmental Policy Act ("NEPA") requirement to evaluate alternatives in the EIS.¹⁷ BLM's lack of adequate explanation for not considering the alternative is also insufficient.

For all of the foregoing reasons, Peoria respectfully requests that BLM evaluate the alternative multi-use designation for the corridor along State Route 74 and re-designate the corridor accordingly.

¹⁵ Energy Policy Act of 2005, § 368(c).

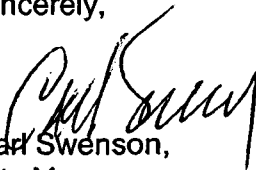
¹⁶ Energy Policy Act of 2005, § 368(d). In response to the Act, BLM, along with several other agencies, drafted the PEIS mentioned above to identify locations for possible energy corridors on federal lands. See "The West-Wide Energy Corridor Draft Programmatic Environmental Impact Statement," available at <http://corridoreis.anl.gov/eis/guide/index.cfm>. Despite APS's submitted comments and plans, none of the corridors are along State Road 74.

¹⁷ 42 U.S.C. § 4332(C)(iii); see also Muckleshoot Indian Tribe v. United States Forest Serv., 177 F.3d 800, 814 (9th Cir.1999).

Director (210) Attention: Brenda Hudgens-Williams
City of Peoria Protest
September 5, 2008
Page 6 of 6

Thank you for your consideration of this matter. If you have any questions concerning this letter or would like to discuss the issues presented herein further, please contact our Assistant City Engineer, Maher Hazine at (623) 773-7502 to facilitate our communications.

Sincerely,



Carl Swenson,
City Manager

cc: Steve Burg, Chief Assistant City Attorney
Dan Nissen, Acting Engineering Director
Maher Hazine, Assistant City Engineer

Attachments to City of Peoria's Protest Letter to BLM

[Omitted from this Exhibit P-2 because each letter already has been admitted into evidence by another party, as noted below]

1. Letter dated November 28, 2005 from Karilee S. Ramaley, Senior Attorney, Pinnacle West Law Department to Julia Souder, U.S. Department of Energy
Vistancia, LLC Exhibit V-1
2. Letter dated July 10, 2006 from Karilee S. Ramaley, Senior Attorney, Pinnacle West Law Department to Julia Souder, U.S. Department of Energy
Vistancia, LLC Exhibit V-2
3. Letter dated February 13, 2008 from APS Project Managers Gregory Bernosky, Paul Herndon, and Mike DeWitt to Argonne National Laboratory re West-Wide Energy Corridor PEIS
Vistancia, LLC Exhibit V-3
4. Letter dated March 18, 2008 from APS Project Manager Mike DeWitt to Steve Cohn, BLM Field Manager
APS Application, Exhibit B-2, "Agency Correspondence"
5. Letter dated June 18, 2008 from BLM Field Manager Steve Cohn to Jennifer Frownfelter, URS Corporation
APS Exhibit A-8

3

11/13/2008 09:40 FAX 6237767832

Cong. Trent Franks 00

002/003

TRENT FRANKS
2ND DISTRICT, ARIZONA

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SUBCOMMITTEE ON STRATEGIC FORCES

JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION
SUBCOMMITTEE ON
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November 10, 2008

US Department of the Interior
Bureau of Land Management
Attention: Brenda Hudgens-Williams
P.O. Box 66538
Washington, D.C. 20035

Dear Ms. Hudgens-Williams,

The City of Peoria, Arizona, recently filed a protest letter to BLM with respect to the Agua Fria National Monument and Bradshaw-Harquahala Proposed Resources Management Plan and Final Environmental Impact Statement dated June, 2008 (the "RMP"). The purpose of this letter is to reflect my support of Peoria's protest filed with BLM's Washington headquarters to your attention (September 5, 2008). The main issue being protested is that BLM neglected to consider and establish a utility or multi-use corridor within Peoria on the BLM land adjacent to State Route 74.

There is no reason to believe such a designation would undermine or weaken the intent of the RMP in any way. Conversely, such a change would further strengthen the integrity of the plan by meeting the needs of thousands of residents, major developers, local governments and the local utility company, APS, who care deeply about the outcome of an existing line-siting case that proposes to cut through this community.

Arizona Public Service ("APS"), a local electric service provider, has written several letters dated as far back as November, 2005. Also included in the protest letter are several oral and written comments indicating that APS *"has worked successfully with various federal agencies in the past to develop utility corridors through the Programmatic Environmental Impact Statement ("PEIS") process"* (for the West-Wide Energy Corridor) and further suggested *"Whenever possible, such corridors should follow existing linear features (e.g. highways, U.S. Forest Service roads, and existing utility lines."*

However, despite the numerous efforts outlined above and others that followed, BLM has proceeded with the finalization of its RMP without a utility designation along State Route 74. This was done even though SR-74 is currently a major linear feature that APS has identified as a potential high-voltage electric transmission line route since September, 2007. Unfortunately, BLM designated the corridor for transportation purposes only.

I have been informed that BLM's Phoenix office has been working to amend the RMP since 2001 and feels pressure to complete the amendment. Although my office can respect the need for this document to be finalized as expeditiously as possible, we believe that not identifying a utility corridor within an existing transportation corridor is simply a matter of error that could be corrected rather easily by BLM. This change would not cause any element of the RMP to be sacrificed or otherwise weakened. The Peoria protest filed on behalf of its many stakeholders should be evaluated on its merits and not on a desired need to complete a document quickly. Doing this now is simply the most efficient and equitable way to process the request.

Any documentation that that is needed in support of this request can be provided by various parties in a timely manner to avoid delaying the issuance of the RMP. If you wish to discuss this matter further, please do not hesitate to contact me or my District Office Chief of Staff, Dan Hay at 623-776-7911.

Most sincerely,



TRENT FRANKS
United States Congress

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Maricopa County

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November 6, 2008

Mike DeWitt
Arizona Public Service Project Manager
P.O. Box 53933, Mail Station 4030
Phoenix, AZ 85072

RE: TS-5 to TS-9 500/230 kV Transmission Line Project

Dear Mr. DeWitt:

I am writing to you to update and clarify Maricopa County's position with regard to the siting of the proposed 500/230 kV transmission line along State Route 74 as stated in my letter dated March 15, 2008. Land use planning in unincorporated Maricopa County has respected this natural scenic corridor designation along our section of State Route 74 but other sections in city control do not have this designation. Maricopa County is not opposed to the routing of the transmission line east of 179th Avenue along State Route 74 within the "Alternative 3-North Corridor" proposed by adjoining jurisdictions.

I want to take advantage of this correspondence to make clear that I am still opposed to any route further west that would negatively impact the military airbase operations and the vital mission of Luke Air Force Base. Maricopa County will not support any routes that may encroach upon Auxiliary #1 Airfield.

If you have any questions or seek further information please feel free to contact me or my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Max W. Wilson".
Max W. Wilson

5

BLM

National Environmental Policy Act

Handbook H-1790-1



January 2008

BLM/WO

Bureau of Land Management (BLM)
National Environmental Policy Act Program
Office of the Assistant Director, Renewable Resources and Planning (WO-200)
1849 C Street NW, Mail Stop 1050LS
Washington, DC 20240

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Available at BLM's Printed Materials and Distribution Section (PMD)
Fax Number 303-236-0845 or BLM_NCS_PMDS@blm.gov
Cover Photograph – Grand Staircase Escalante National Monument by Peg Sorensen

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Non-Federal actions which potentially have a cumulatively significant impact together with the proposed action must be considered in the same NEPA document (40 CFR 1508.25). Identifying an action as a cumulative non-Federal action is a component of your cumulative effects analysis of the proposed action (see section 6.8.3, *Cumulative Effects*).

6.5.2.3 Similar Actions

Similar actions are proposed or reasonably foreseeable Federal actions that have similarities that provide a basis for evaluating their environmental consequences together with the proposed action (40 CFR 1508.25(a)(3)). Similarities are not limited to type of action; such similarities include, for instance, common timing or geography. You may include similar proposed actions as aspects of a broader proposal, analyzed in a single NEPA document, as described above for connected and cumulative actions, when a single NEPA document would improve the quality of analysis and efficiency of the NEPA process, and provide a stronger basis for decision-making.

If other Federal actions with a common timing or geography are interdependent with the proposed action, they would be considered as connected actions (see section 6.5.2.1, *Connected Actions*). If other Federal actions with common timing or geography would have a cumulative effect together with the proposed action, they would be considered as cumulative actions (see section 6.5.2.2, *Cumulative Actions*).

If you include similar actions as aspects of a broader proposal, analyzed in a single NEPA document, evaluate the purpose and need and the range of alternatives to ensure that they adequately address the similar actions.

6.6 ALTERNATIVES DEVELOPMENT

6.6.1 Reasonable Alternatives

The NEPA directs the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;...” (NEPA Sec102(2)(E)).

The range of alternatives explores alternative means of meeting the purpose and need for the action. As stated in section 6.2.1, *The Role of the Purpose and Need Statement*, the purpose and need statement helps define the range of alternatives. The broader the purpose and need statement, the broader the range of alternatives that must be analyzed. You must analyze those alternatives necessary to permit a reasoned choice (40 CFR 1502.14). For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. When there are potentially a very large number of alternatives, you must analyze only a reasonable number to cover the full spectrum of alternatives (see *Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981*). When working with cooperating agencies, your range of alternatives may need to reflect the decision space and authority of other agencies, if decisions are being made by more than one agency.

In determining the alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. "Reasonable alternatives include those that are *practical or feasible* from the technical and economic standpoint and using common sense, rather than simply *desirable* from the standpoint of the applicant." (Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981). You can only define whether an alternative is "reasonable" in reference to the purpose and need for the action. See **Chapter 8, *Preparing an Environmental Assessment*** and **Chapter 9, *Preparing an Environmental Impact Statement*** for discussion of reasonable alternatives for an EA and EIS. For externally generated action, the range of alternatives will typically include at least denying the request (No Action); approving the request as the proponent proposed; or approving the request with changes BLM makes to the proponent's proposal.

For example,

An EIS for an oil field development project has a purpose and need which (in abbreviated form) is to determine whether to permit oil exploration and development within the project area consistent with existing leases and to develop practices for oil development consistent with the land use plan. The EIS would typically analyze at least the following alternatives:

- *No Action, which would entail no new drilling beyond what is currently permitted;*
- *The proponent's proposal for field development; and*
- *The proponent's proposal with additional or different design features recommended by the BLM to reduce environmental effects. This alternative would include design features that differ from the proponent's proposal, such as alternative well locations, alternative access routes, additional timing or spacing constraints, offsite mitigation, different methods for treating produced water, horizontal well drilling, or other technologies.*

In some situations it may be appropriate for you to analyze a proposed action or alternative that may be outside the BLM's jurisdiction (Question 2b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981). Such circumstances would be exceptional and probably limited to the broadest, most programmatic EISs that would involve multiple agencies. For most actions, we recommend that the purpose and need statement be constructed to reflect the discretion available to the BLM, consistent with existing decisions and statutory and regulatory requirements; thus, alternatives not within BLM jurisdiction would not be "reasonable."

Note: Though not required, a manager may elect to analyze in detail an alternative that might otherwise be eliminated to assist in planning or decision-making. In such cases, explain in the NEPA document why you are electing to analyze the alternative in detail.